THE HON'BLE SRI JUSTICE C.V. RAMULU

Friday, 11th August, 2006

W.P.No.4739 of 2006

Between:

Bonthu Damodara Rao & others … Petitioners

and

The Eelampudi Primary Agricultural
Cooperative Credit Society Limited
No.H682, Eelampudi, Bhimavaram,
West Godavary District, rep. by its
Secretary and another … Respondents

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ORAL ORDER:

This Writ Petition is filed seeking a Mandamus declaring the public auction notification dated 30-1-2006 issued by the respondents in proposing to auction 'D' form patta lands of the petitioner situated in Sy.Nos.957/3, 989/4 and 917/1 of L.V.N.Puram village, Bhimavaram Mandal, West Godavari District as arbitrary and illegal.

It seems, petitioners are 'D' form patta holders against the lands of extents of Ac.2.52 cts., Ac.2.47 cts., and Ac.2.49 cts., in Survey Nos. 957/3, 989/4 and 917/1 respectively of L.V.N.Puram village. For the purpose of obtaining long term loans, the petitioners mortgaged D-form pattas with the 1st respondent. Thereafter, when they failed to repay the loans, a dispute was raised under Section 61 of the Andhra Pradesh Cooperative Societies Act,1964 (for short 'the Act') and a certificate under Section 71 of the Act was obtained by the 1st respondent-Bank. In pursuance of the same, the impugned notification dated 30-1-2006 was issued by the respondents proposing to auction the lands of the petitioners.

There is no necessity of going into all the details. Learned counsel for the petitioners strenuously contended that D-form patta lands, firstly cannot be mortgaged, and secondly cannot be auctioned, since in the eye of law there is no mortgage at all. In this regard, he has drawn attention of the Court of Sections 3,4 and 6 of the Andhra

Pradesh Assigned Lands (Prohibition of Transfers) Act,1977. There is no difficulty that there is absolute prohibition of sale or mortgage of D-Form patta lands. But, Section 6 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act,1977 gives an exemption of such mortgages in favour of Central Government or State Government or local body or cooperative society. However, Section 6 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act,1977 was subject matter of consideration and interpretation of this Court in a reported Judgment in **B. RAMAIAH v. M.R.O.**[1] wherein it was held as under:

> "**13**. Now, Sec.6 follows Secs.3 and 4. It says "nothing in this Act shall apply to the assigned lands held on mortgage by the State or Central Government". It is necessary to notice the language of the Section. Evidently, on the date of commencement of the Act, several assigned lands were held on mortgage by the State Government, Central Government, and other authorities and Banks, specified in this Section. The idea obviously was to save such mortgages. Indeed, we are of the opinion that Section 6, and the Explanation to the definition of 'assigned land' in Section 2(1), are designed to achieve a dual purpose, namely, to save and permit mortgages in favour of Central Government, State Government, local authorities, cooperative societies and certain Banks and other specified authorities. It would have been more appropriate – we repeat- if the Explanation occurring in Sec.2(1) had been placed in Section 2(6), or as an Explanation to sub-sections (1) to (4) of Section 3. Be that as it may, the Explanation and Section 6 together have the effect of declaring that the Act does not apply to mortgages of assigned land in favour of the specified Governments and institutions. While Section 6 saves the mortgages existing on the date of commencement of the Act, the Explanation permits mortgage of assigned land even after the coming into force of the Act. No more. Section 6 does not say, and cannot be understood to say, that once the assigned land is mortgaged in favour of the bodies mentioned therein, the Act ceases to apply to such lands and/or that they can be alienated by the assignee without attracting the prohibition contained in Section 3. Accepting such an argument would open up an easy and simple escape route—a ready device to defeat the object and purpose of the enactment. All that an intending purchaser has to do is to get the land mortgaged first in favour of any of the bodies mentioned in Section 6, and then merrily purchase the land. We cannot be a party to any

such construction.

> **14.** In this connection, it is necessary to notice the difference in language of Section 6, and the Explanation; to wit, while Section 6 exempts not only the State Government, Central Government, any local authority, a cooperative society, and a scheduled Bank but also "such other financial institution owned, controlled or managed by a State Government or the Central Government, as may be notified by the Government in this behalf", the Explanation to Section 2(1) is confined to Central Government, State Government, any local authority, cooperative society and Bank including the Banks specifically mentioned therein. The Explanation does not speak of financial institutions to be notified by the Government referred to in Section 6. The effect of this distinction is that any mortgage in favour of such financial institutions, after the commencement of the Act, is not saved. Only the pre-Act mortgages in their favour are saved."

and submitted that even if Section 6 exempts certain mortgages, it is only pre-Act mortgages and not post-Act mortgages. Therefore, once mortgage itself is illegal, the question of auction of such land is further prohibited under the Act. Per contra, learned counsel for the 1st respondent contended that it is, in fact, in view of Section 6 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act,1977, the petitioners' lands were mortgaged and availed the loans. Once having availed the loans, it does not lie in their mouth to say that Section 6 has no application and the mortgages in favour of the 1st respondent are illegal.

I am of the opinion that in view of Sections 3 and 4 read with Section 6 of the Act coupled with the Judgment noticed above, the exemption provided under Section 6 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act,1977 is only as to the mortgages that were made prior to the enactment and not otherwise. May be, respondents cannot auction the lands, which are mortgaged to them since the mortgage itself was not permissible. Admittedly, the present mortgages are post-Act mortgages; therefore, they are not saved.

Even otherwise, assuming that the mortgages in favour of the 1st respondent-society are true and valid, the society cannot sell the same in a public auction; otherwise, it amounts to depriving the petitioners of their assigned lands by inventing indirect method, which is not the purpose of the Act, as noticed by the Division Bench in the said Judgment. As such, the impugned notification is liable to be set aside and is accordingly set aside.

The certificate obtained under Section 71 of the Act is executable under sub-section (2) of Section 70, which contemplates that every order or decision made under Section 60, Section 71, Section 76, Section 77 or Section 78 for recovery of any amount, may be executed by a civil Court having local jurisdiction on a certificate signed by the Registrar or any person authorized by him in this behalf as if the Order or decision were a Decree of that Court. Further, Section 71(3) of the Act also contemplates that a certificate issued by the Registrar under sub-section (1) or sub-section (2) shall be final and conclusive proof of the arrears stated to be due therein and the certificate shall be executed in the manner specified in Section 70(2) of the Act. In view of this, it is always open for the 1st respondent to work out his remedies for execution of the certificate issued under Section 71 by invoking the provisions of Section 70(2) of the Act.

The Writ Petition is, thus, disposed of. No order as to costs.

11-8-2006

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[1] 1990(1) ALT 290